

Case 4:22-cv-00167-P Document 1 Filed 03/07/22 Page 1 of 5 PageID 1

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

NORTHERN DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FIL ED
MAR - 7 2022
CLERK, U.S. DISTRICT COURT
By *M. S. am*
Deputy

Benita D. Nesby
Plaintiff

v.

All Commercial Floors.
Defendant

4-22CV-167-P

Civil Action No.

COMPLAINT

On January 4th, 2022, I was laid off from All Commercial Floors, by Jeff Merritt who is the Receiver. That week, they had already told me (I was the HR Director) they had to postpone payroll which was 1/5/22. On 1/10/22 they processed payroll however, they only paid active employees. Any one who was laid off or resigned from 12/16 - 1/4 was not paid. I was told that I would be paid but that he (Mr. Merritt) did not know when.

I filed a wage claim with TWC & they have found that I am due 7,791.67. I am due these wages & simply want to be paid what I am due.

* Attach additional pages as needed.

Attached is the findings from Texas Workforce Commission

Date

3/7/2022

Signature

Benita D. Nesby

Print Name

Benita D. Nesby

Address

2209 Lockesley Drive

City, State, Zip

Flower Mound TX 75028

Telephone

972-800-5985

TEXAS WORKFORCE COMMISSION

PRELIMINARY WAGE DETERMINATION ORDER

Labor Law

February 28, 2022

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PAGE 1 OF 2 PAGES

BENITA D NESBY
2209 LOCKESLEY DR
FLOWER MOUND TX 75028

Determination Number: 000592672
Wage Claim Number: 22 050296-1
Identification Number: XXX-XX-XXXX

ALL COMMERCIAL FLOORS, INC.

An investigation having been completed, the following order is entered pursuant to Chapter 61 of the Texas Labor Code:

FINDINGS AND CONCLUSIONS

Our investigation has determined that the claimant is entitled to \$7,791.67 for unpaid wages. Convincing evidence of employment has been provided for all or part of the period claimed.

The claimant is not entitled to \$219.87 for unpaid bonuses. The Texas Payday Law provides that bonuses are due for payment according to the terms of the bonus agreement. The employer's bonus agreement provides that bonuses will be provided on a discretionary basis. Therefore, the employer is not obligated to provide the bonus amount.

It has been determined that the employer violated the provisions of the Texas Payday Law when the claimant's earned wages were not paid in accordance with the law. If it is determined that an employer has acted in bad faith, the Commission may assess an administrative penalty for failure to pay wages as required by law. In this case no penalty is assessed.

The employer named in your wage claim, All Commercial Floors, Inc. has been placed in temporary receivership according to case number 4:21-cv-01154-0 filed on 10/22/21 in the Room 310 District Court of the Northern District of Texas Fort Worth Division County. Therefore, this agency is unable to assist in the collection of wages. Pursuant to the Court's order, all claims against this employer must be filed with the District Court and/or with the court appointed Temporary Receiver, Jeff C. Merritt 101 S. Coit Road, Suite 36-306 Richardson, TX 75080 or by calling, Jeff C. Merritt at (214) 226-0794.

Continued on Next Page

(SEE REVERSE SIDE FOR ADDITIONAL INFORMATION)

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TEXAS WORKFORCE COMMISSION

PRELIMINARY WAGE DETERMINATION ORDER

Labor Law

February 28, 2022

PAGE 2 OF 2 PAGES

BENITA D NESBY
2209 LOCKESLEY DR
FLOWER MOUND TX 75028

Determination Number: 000592672
Wage Claim Number: 22 050296-1
Identification Number: XXX-XX-XXXX

ORDER

The employer,
ALL COMMERCIAL FLOORS, INC.

is ORDERED to pay \$7,791.67 for the use and benefit of the claimant,
BENITA D NESBY, and shall remit the gross or net amount disbursement payable to the Texas Workforce Commission.

In addition, being found in violation of Chapter 61 of the Texas Labor Code, the employer is assessed an administrative penalty in the amount of \$0.00 which is to be remitted to the Texas Workforce Commission.

Assigned Representative: OLSON

TEXAS WORKFORCE COMMISSION
 Labor Law-Bank Notice Unit
 101 East 15th Street
 Austin, Texas 78778-0001
 1 800 832-9243 (Texas Only)
 1 512 475-2670 (Out-of-State)

32040561000120303


BENITA D NESBY
 2209 LOCKESLEY DR
 FLOWER MOUND TX 75028

Date: February 28, 2022
 Wage Claim No.: 22 050296-1
 Employer Name: ALL COMMERCIAL FLOOR
 Employer No.: 08 167105-2

Dear Claimant,

The Texas Payday Law allows for the issuance of a Notice of Delinquency/Freeze and Notice of Levy as a means of collection on your behalf. When an employer is delinquent in payment of wages, this process allows the Texas Workforce Commission to notify your employer's financial institution(s), other businesses or governmental entities from whom this employer potentially receives income. These notices freeze the account(s) or income funds and require the institution or other entity, on demand by the Texas Workforce Commission, to pay funds from the account or account receivables to settle the payment of wages.

Please provide, in the spaces below, the name(s) and address(es) of any financial institution(s) in which the employer may have an account. Also, if you know of any business(es) or government agency(ies) from whom the employer may possibly receive income (e.g. vendors, suppliers, contractors, clients, or customers for whom services were rendered), please list them. If available, it would be helpful if you could provide a copy of the employer's check.

This information is needed to assist us in the collection of wages for you. Please reply **within 15 days** from the date of this request by mailing this completed form to the above address. If you have questions you may call the number shown above. Telecommunication device for the deaf(TDD) users can communicate with TWC by using Relay Texas. Those numbers are: 1 800-735-2989 (TDD) or 1 800-735-2988 (VOICE).

If your address or phone number changes, it is your responsibility to notify Labor Law immediately. If you cannot be contacted, the likelihood of receiving unpaid wages will be reduced. **IF YOU DO NOT HAVE ANY ADDITIONAL INFORMATION IT IS NOT NECESSARY TO RETURN THIS FORM OR CONTACT US.**

Bank/Business _____ Bank/Business _____

Address _____ Address _____

City _____ City _____

Phone _____ Phone _____

Bank/Business _____ Bank/Business _____

Address _____ Address _____

City _____ City _____

Phone _____ Phone _____

Comments _____

IF ADDITIONAL SPACE IS NEEDED, USE THE BACK OF THIS FORM

RECEIVED
11:59 am

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DEFENDANTS

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)*Denton*

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

PTF	DEF	PTF	DEF
<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4
<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	310 Airplane	365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	315 Airplane Product Liability	367 Health Care/Pharmaceutical Personal Injury Product Liability		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	320 Assault, Libel & Slander	368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	330 Federal Employers' Liability	370 Other Fraud		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	340 Marine	371 Truth in Lending		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	380 Other Personal Property Damage		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	385 Property Damage		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	355 Motor Vehicle Product Liability	Product Liability		<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	360 Other Personal Injury			<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability	362 Personal Injury - Medical Malpractice			<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 850 Securities/Commodities/ Exchange
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation	440 Other Civil Rights	Habeas Corpus:	861 HIA (1395ff)	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 220 Foreclosure	441 Voting	463 Alien Detainee	862 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 230 Rent Lease & Ejectment	442 Employment	510 Motions to Vacate Sentence	863 DIWC/DIWW (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	443 Housing/ Accommodations	530 General	864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	445 Amer. w/Disabilities - Employment	535 Death Penalty	865 RSI (405(g))	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 290 All Other Real Property	446 Amer. w/Disabilities - Other	Other:		<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
	448 Education	540 Mandamus & Other		<input type="checkbox"/> 950 Constitutionality of State Statutes
		550 Civil Rights		
		555 Prison Condition		
		560 Civil Detainee - Conditions of Confinement		
IMMIGRATION				
		462 Naturalization Application		
		465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|---|---|--|---|--|--|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause:

Two - Ware Claim - Texas Payday Law.

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See Instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____